Federation of Mobile Home Owners of Florida, Inc.
P.O. Box 5350 Largo, FL 33779-5350 813/530-7539 800/959-7539 (Florida Only) Fax 813/535-9427

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of Section 207 of the Telecommunications Act of 1996

CS Docket No. 96-83

Restrictions on Over-the-Air Reception Devices:
Television Broadcast Service and
Multichannel Multipoint Distribution Service

Re: Further Notice of Rule Making

These comments are from the Federation of Mobile Home Owners of Florida, Inc. and are in response to the Order adopted on August 5, 1996 by the Federal Communications Commission requesting additional comments as to the matters discussed in Paragraphs 59 to 65 of the Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rule Making.

The Federation of Mobile Home Owners of Florida, Inc. (FMO) is a statewide consumer advocacy association dedicated to protecting the rights and interests and enriching the lifestyle of manufactured/mobile homeowners throughout the State of Florida. The FMO was formed in 1962 and has a membership of approximately 220,000 mobile home owners. Ninety percent of our membership lives in rental mobile home parks; that is, they own their mobile home, but they rent the land upon which it sits. The balance of the membership owns their mobile home, as well as the land upon which their home sits, either in the form of a subdivision, a cooperative or a condominium. There are approximately one million manufactured/mobile home owners in Florida. In addition, there are nearly ten million more who live in manufactured/mobile home rental parks throughout the United States.

Mobile home owners who own their homes and place them in a rental mobile home park present a situation that is different from the type of property rights that were discussed in the FCC Order adopted on August 5, 1996. This unique type of rental property, which is distinguishable from every other type of landlord-tenant classification, has been specifically recognized by the Florida Supreme Court, as well as the courts of other states. The mobile home owner purchases a manufactured/mobile home from the park owner or a dealer at a substantial cost ranging from $20,000 to $60,000 or more. The mobile home is considered personal property when it is not affixed to real estate owned by the mobile home owner.

Upon purchasing this mobile home, it is placed on a lot in the park owner's development. In order to place it on the lot, the mobile home owner is required to pay for a concrete pad, a driveway, skirting around the mobile home, and most newer developments require a carport

and/or a screened enclosure all of which could increase their costs by an additional $5,000 to $7,000. State and local laws require that the mobile be home tied down. The fact is that the mobile home is no longer mobile, and for all practical purposes, the mobile home owner's personal property (the manufactured/mobile home) becomes permanently affixed to the park owner's real property.

The intent of Congress in enacting the Telecommunications Act of 1996 was to prohibit restrictions that impair a consumer's right to receive video programming services through various devices, including direct broadcast satellite services, in order to make such programming available to all people. Congress intended that consumers should have the right to choose what type of devices they wish to use to receive such services.

Mobile home park owners who rent lots can impair the rights of mobile home owners from receiving video programming from direct broadcast satellite transmission or other types of over-the-air reception devices by several means:

1. The rules and regulations promulgated by the park owner prohibit the mobile home owner from installing an antenna or satellite dish of any kind on the mobile home even though the home is owned by the mobile home owner who has exclusive use and control of the home.

2. The park owner owns a satellite dish or other transmission device that he uses to receive over-the-air broadcasts and then resells the video programming services to the individual mobile home owners in his park at a profit. The service may be substandard or less than the service that the mobile home owner could get through a local cable company; however, the park rules and regulations prohibit the homeowner from receiving television programming from any other cable company or from installing their own antenna or satellite dish.

3. The park owner enters into a bulk agreement with a cable company doing business in the area and, thereafter, resells the cable to the mobile home owners in the park at a profit. The park rules and regulations prohibit the residents from installing their own antenna or satellite dish and prohibit them from obtaining cable from any other cable company.

All of the foregoing are examples of impairments that Congress intended Section 207 of the 1996 Act to cure.

When the Commission considered the various categories of property rights that might be affected by the Rules that it was required to promulgate, the Commission did not consider the unique, hybrid tenancy that arises in a rental mobile home park where the mobile home owner is in exclusive use and control of their mobile home, which is directly owned by them, but the mobile home is placed upon a rented mobile home lot owned by another. **The FMO urges that the FCC recognize this unique form of housing in which mobile home owners find themselves**

and extend to the owners of mobile homes that are located on rented lots the rules that were adopted in Paragraphs 51 and 52 of the Order dated August 5, 1996, specifically, the new Subpart S Section 1.4000, which was added to Part 1 of Title 47 of the Code of Federal Regulations, and the Amended Section 25.104(b)(1) and 25.104(f). The FMO requests that the Commission clarify and publish that these rules are applicable to the unique landlord-tenant situation presented in a rental mobile home park when the homes are owned by the viewer. The comments leading up to the adoption of the rule in Paragraph 51, which prohibits restrictions that impair installation of antennas or satellite dishes of less than one meter on property exclusively owned by the viewer, refer to situations wherein the "property" is real property as opposed to personal property. Mobile homeowners meet both tests of Paragraphs 51 and 52. They own the property (their mobile home and its appurtenances) upon which they should be permitted to place an antenna or satellite dish of less than one meter and the property is within their exclusive use or control.

A second issue to be considered is whether a mobile home owner who owns his home and has exclusive control of the home should have the right to place the antenna or satellite dish on the rented mobile home lot over which he has exclusive use and control pursuant to a lease agreement. While nearly all mobile home owners would be able to install such equipment on their own individually owned mobile home over which they have exclusive control, the FMO believes that the rules that are developed by the Commission should implement the Congressional objective that every person's rights to video programming be assured to the fullest extent possible.

As set forth above, the mobile home, once it is placed on a rented mobile home lot, has the wheels removed, is tied down and is permanently connected to utilities, is no longer mobile. The mobile home owner cannot move out when the park owner impairs their rights to receive video programming like a renter in an apartment can do. The mobile home owner who places his home on a rental mobile home lot is in an unequal bargaining position as soon as his home is located upon the park owner's property. In Florida, it costs from $7,000 to $10,000 to remove a home from a park and relocate to another park.

In this regard, the Commission should consider the general law regarding a tenant's rights and obligations, as to changes in the condition of leased property, when it considers what rule should be promulgated to implement the 1996 Telecommunications Act for persons who reside on rental property. The Restatement of the Law Second, Property 2d, Landlord and Tenant, Section 12.2 (See Attached) provides that a tenant is entitled to make changes in the physical condition of the leased property which are reasonably necessary for the tenant to use the leased property for the intended purpose, unless the parties have validly agreed to the contrary. The Restatement continues to provide that the only changes that can be made in the physical condition of the leased property in such a situation is when the property can be restored to its former condition by the tenant who makes the change upon termination of the lease.

Once again, a mobile home located on a rented mobile home lot presents a unique situation because the viewer is only renting the land. The Commission must balance the rights of the

tenant to receive broadcast signals without impairment by the landlord with the property owner's rights. It would be difficult to show how a landlord would be damaged, or a taking could occur, if a satellite dish or antenna were placed on the land that a mobile home owner rents and the wires or connections were only being placed on the mobile home owned by the viewer. If the tenancy were ever terminated, the satellite dish or antenna could easily be removed without any damage occurring to the park owner's land.

Again, the Federation of Mobile Home Owners of Florida, Inc. urges that the Commission recognize mobile home owners as property owners and clarify that the Rules adopted on August 5, 1996, apply to mobile home owners who own and are in exclusive control of their own homes located on a rented mobile home lot. In addition, the FMO urges that those persons who live in a mobile home on a rental mobile home lot be permitted to install antennas or satellite dishes of less than one meter on the rented lot, which is owned by the mobile home park owner, because in balancing the rights of the viewer versus those of the landlord in this particular situation, the installation of a DBS antenna is not a permanent occupation of the real estate, which would cause damage to the real property owner.

Please do not hesitate to contact the Federation of Mobile Home Owners of Florida, Inc. if you have any further questions or wish further comments regarding these issues as they affect mobile home owners and the land owner of a rental mobile home park.

Sincerely,

Lucinda Warren
General Counsel

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conscionability standard of *Comment n*)); unintentional defaults in the payment of rent (Paducah Home Oil Co. v. Paxton, 222 Ky. 778, 2 S.W.2d 650, 56 A.L.R. 797 (1928) (check lost in the mail)); and the delay of the landlord (Hoebel v. Raymond, 46 Idaho 55, 266 P. 433 (1928)).

Illustration 16, an example of the landlord's waiver of forfeiture by treating the lease as alive, states the majority rule. See Annot., 109 A.L.R. 1267, 1283 (1937).

§ 12.2 Tenant's Rights and Obligations As to Changes in the Physical Condition of the Leased Property

(1) Permissible changes by the tenant—Except to the extent the parties to a lease validly agree otherwise, the tenant is entitled to make changes in the physical condition of the leased property which are reasonably necessary in order for the tenant to use the leased property in a manner that is reasonable under all the circumstances.

(2) Remedies of landlord for impermissible changes by tenant—In situations not described in subsection (1), except to the extent the parties to a lease validly agree otherwise, there is a breach of the tenant's obligation if he makes changes in the physical condition of the leased property and the leased property cannot be restored to its former condition, or if it can be restored to its former condition, it is not so restored promptly after a request from the landlord to do so; and for this breach, the landlord may:

(a) terminate the lease and recover damages;

(b) continue the lease and recover damages; and

(c) in an appropriate case, obtain equitable relief.

(3) Duty of tenant to restore in case of permissible changes—Except to the extent the parties to a lease validly agree otherwise, there is a breach of the tenant's obligation if he makes permissible changes in the leased property and does not, when requested by the landlord, restore, where restoration is possible, the leased property to its former condition within the time provided in § 12.3 or within a rea-

sonable time after the request to restore, whichever is later, unless such changes result from reasonable wear and tear, or unless it would be unreasonable to require the restoration in the light of the probable future use of the leased property; and for this breach, the landlord may:

(a) recover damages; and

(b) in an appropriate case, obtain equitable relief.

(4) Removal by tenant of permissible annexations—Except to the extent the parties to a lease validly agree otherwise, the tenant is entitled to remove permissible annexations he has made to the leased property, including agricultural crops, if the leased property can be and is restored to its former condition after the removal and the removal and restoration are made within the time provided in § 12.3.

(5) Duty of tenant not to remove certain annexations—In situations not described in subsection (4), except to the extent the parties to the lease validly agree otherwise, there is a breach of the tenant's obligation, if he removes or attempts to remove annexations he has made to the leased property without the consent of the landlord; and for this breach, the landlord may:

(a) recover damages; and

(b) in an appropriate case, obtain equitable relief.

Comment:

a. Scope of section. This section includes the material historically dealt with under the term waste. The conduct of a tenant that may constitute waste has been classified as permissive waste, voluntary waste or ameliorating waste. The term waste and the terms associated with it are encompassed in this section by the phrase "change in the physical condition of the leased property."

Annexations made to the leased property by the tenant produce a change in the physical condition of the leased property. Thus the subject matter frequently considered under the labels of "trade fixtures," "agricultural fixtures," and "domestic fixtures" is a part of this section.